IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRL.A.No. 277 of 1998(A)

STC.261/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT, CHITTUR

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APPELLANT:

SIVARAMA MUTHALIAR,
S/O.KALIAPPA MUTHALIAR,
PANNIPERUNTHALA,
THEKKEDESAM, CHITTUR.

BY ADV. SRI.G.HARIHARAN

RESPONDENTS:

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1. CHANDRABOSE, S/O.GOPALAN,
THAYIL HOUSE, PANAMOKKU, KANIMANGALAM, THRISSUR.

2. STATE OF KERALA REP. BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY DV. SRI.P.VIJAYA BHANU
R2 BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.277 OF 1998

Dated 7th March, 2007

JUDGMENT

This appeal is filed against an order of acquittal. According to the appellant, first respondent has borrowed Rs.1,00,000/= from the appellant on 3.10.1995 for business purpose and on 3.11.1995 the first respondent issued a cheque in favour of the appellant in discharge of the liability. The cheque was dishonoured due to insufficiency of funds and after fulfilling statutory formalities, the complaint was filed. The trial court found that the cheque was not issued for discharge of any legally enforceable debt.

2. According to the accused, he had some monetary transactions with the grandson of PW1. He was a tenant of him. At the time of taking the building on rent, the accused had given him a signed blank cheque and a signed blank white paper with an agreement that he will return the same at the time of vacating the premises. But, he has not returned the same. He has also borrowed money from him on execution of pronotes. Thereafter, the grandson filed a civil suit for recovery of Rs.50,000/= on the basis of one pronote at sub court, Thrissur. PW1 has filed this case misusing the signed

blank cheque given to his grandson. Exts.D1 to D3 would show that there were transactions between the accused and PW1. The trial court also found that no evidence was adduced to show that the cheque was issued for a legally enforceable debt. PW1 in his chief examination deposed that accused requested Rs.3 lakhs, but, Rs.1 lakh was given on 3.10.95 in execution of Ext.P1 cheque. He stated as follows:

In cross examination he deposed that money was asked on 3.10.95. He deposed as follows:

He also deposed that entire amount was paid in cash. Later he stated that there was an agreement to give interest at the rate of Rs.1/- per Rs.100/=. Amount mentioned in the cheque was inclusive of that amount. He deposed as follows:

If that be so, the statement that Rs.1,00,000/= was paid in cash is not correct as according to him cheque amount is inclusive of interest. He is not telling truth and presumption under section 139 is rebutted. It is not stated that he is a regular money lender. It is also difficult to believe that he gave so much amount to a person to whom he has acquaintance only for six months without any security other than cheque. Source of income is also doubtful. He also stated that accused only signed the cheque. But, contents were written by one Krishnankutty. He was not examined. A specific question was asked whether for the very same amount of Rs.50,000/= a pronote and blank cheque were obtained and his grandson filed civil case using the same. But, he answered evasively and pretended ignorance of the civil case.

Civil court proceedings were produced before this court to show that his grandson filed a case against the accused. The evidence given by PW1 only supports the view that case of the accused is more probable. The civil suit filed by the grandson of the complainant as O.S.1505 of 1995 is produced herein as Annexure A. It is submitted that the above case was dismissed. Finding of the civil court in that case was that the complainant failed to prove that the cheque was issued for a legally enforceable debt. The above is based on evidence. In this connection, I refer to the judgment of the Supreme Court in **M.S.Narayana Menon** v. **State of Kerala** (2006 (3) KLT 404). Since the view expressed by the trial court is a possible view, I see no ground to interfere in the judgment of the trial court in acquitting the accused. The findings of the trial court are not perverse or patently illegal.

The appeal is dismissed.

J.B.KOSHY
Judge

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